

APPEAL NO. 030124
FILED MARCH 7, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 12, 2002. The hearing officer determined that the respondent (carrier herein) was relieved of liability under Section 409.002 because the appellant (claimant herein) failed to timely report her injury without good cause. The hearing officer concluded that since the carrier was relieved of liability, the claimant's injury was not compensable and that she did not have disability. The claimant appeals, questioning the hearing officer's determination as to the date of injury; contending that she did report to her employer prior to March 12, 2002, that she was having pain; and that she had good cause not to report an injury to her employer until she was examined by a doctor on March 11, 2002. The carrier responds that the decision of the hearing officer should be affirmed.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The 1989 Act generally requires that an injured employee or person acting on the employee's behalf notify the employer of the injury not later than 30 days after the injury occurred. Section 409.001. The 1989 Act provides that a determination by the Texas Workers' Compensation Commission that good cause exists for failure to provide notice of injury to an employer in a timely manner or actual knowledge of the injury by the employer can relieve the claimant of the requirement to report the injury. Section 409.002. The burden is on the claimant to prove the existence of notice of injury. Travelers Insurance Company v. Miller, 390 S.W.2d 284 (Tex. Civ. App.-El Paso 1965, no writ). To be effective, notice of injury needs to inform the employer of the general nature of the injury and the fact it is job related (emphasis added). DeAnda v. Home Ins. Co., 618 S.W.2d 529, 533 (Tex. 1980). Thus where the employer knew of a physical problem but was not informed it was job related, there was not notice of injury. Texas Employers' Insurance Association v. Mathes, 771 S.W.2d 225 (Tex. App.-El Paso 1989, writ denied). Also, the actual knowledge exception requires actual knowledge of an injury. Fairchild v. Insurance Company of North America, 610 S.W.2d 217, 220 (Tex. Civ. App.-Houston [1st Dist.] 1980, no writ). The burden is on the claimant to prove actual knowledge. Miller v. Texas Employers' Insurance Association, 488 S.W.2d 489 (Tex. Civ. App.-Beaumont 1972, writ ref'd n.r.e.).

In the present case, the hearing officer found that the claimant was injured on _____, and that she did not report to the employer that her shoulder condition was work related until March 12, 2002. The hearing officer also found that good cause did not exist for the claimant's failure to timely report her injury. The claimant argued that her injury may have taken place before _____. As the hearing officer points out in his decision, an earlier date of injury would not make the claimant's report

of injury timely. The claimant does contend that she reported to her employer that she was having pain prior to March 12, 2002. However, reports of pain do not establish that the claimant reported that her physical problems were work-related. The claimant did report a work related injury on March 12, 2002, but this was more than 30 days after her injury. The claimant argues that she could not report an injury until she saw the doctor on March 11, 2002, and discovered that her condition was serious. Trivialization of injury can be the basis for good cause not to timely report. However, in the present case the hearing officer found that the claimant did not establish good cause, and we cannot say that in this case this was an abuse of discretion.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **ROYAL INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICES COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Michael B. McShane
Appeals Panel
Manager/Judge